

PATENT COOPERATION TREATY
PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
 (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P235603PC-WT	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/012855	International filing date (<i>day/month/year</i>) 09.11.2004	Priority date (<i>day/month/year</i>) 10.11.2003
International Patent Classification (IPC) or national classification and IPC A61 K7/032, A61 K7/06		
Applicant COTY B.V.		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: <ul style="list-style-type: none"> a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of 2 sheets, as follows: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/EP2004/012855

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:

 - international search (Rule 12.3 and 23.1(b))
 - publication of the international application (Rule 12.4)
 - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

the international application as originally filed/furnished
 the description:
 pages 1–9 _____ as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
 the claims:
 nos. _____ as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* 1–6 _____ received by this Authority on 07.09.2005 with letter of 07.09.2005
 nos.* _____ received by this Authority on _____
 the drawings:
 sheets _____ as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____
 a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. The amendments have resulted in the cancellation of:

the description, pages _____
 the claims, nos. 1–8 _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/EP2004/012855

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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1. Statement

Novelty (N)	Claims	1–6	YES
	Claims		NO
Inventive step (IS)	Claims	1–6	YES
	Claims		NO
Industrial applicability (IA)	Claims	1–6	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

This report makes reference to the following documents:

D1: US-A-2002/142014

D2: EP-A-1172078

D3: US-A-2002/098217

1. Amendments

The amendments submitted with the letter of 7 September 2005 are supported by the originally submitted claims and by the description, page 4, lines 23–26, page 5, lines 25–29 and do not introduce substantive matter that goes beyond the disclosure in the international application as filed. These amendments therefore meet the requirements of PCT Article 19(2) and PCT Article 34(2)(b).

2. Novelty

D1 discloses a cosmetic preparation that contains fibers of up to 10 mm long in an amount of 0.1 to 50 wt.% and a copolymer having carboxylate and polydimethylsiloxane groups in an amount of 0.01 to 20 wt.%. Waxes are mentioned as additional components. The preparations are

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/EP2004/012855

Box No. V **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

used, *inter alia*, as mascara (claims 1 to 24, 28).

D2 describes a mascara that contains elastomeric fibers having a length of 0.01 to 1 cm in amounts of 0.01 to 50 wt.% and waxes in amounts of 0.01 to 10 wt.%. The compositions in examples 6 to 8 include a lipophilic copolymer (PVP/eicosene copolymer) (claims; page 4, paragraph 22; page 5, paragraphs 36-39; page 8, paragraph 56; examples 6-8).

D3 describes a mascara that contains fibers having a length of 1 to 3.5 mm and an aqueous wax microdispersion. The wax has a melting point of 30 to 120° C, such as, for example, carnauba wax. In addition, a fat-soluble polymer in amounts of 0.1 to 60 wt.% is contained therein (claims 1 to 40, 49 to 52 and 61).

The present application discloses a method of producing a mascara having fiber components. The oil phase contains wax, oils and at least one oil-soluble or oil-dispersible polymer and is emulsified in a water phase at 65-78 °C. An additional alcohol-free mixture of fibers, liquid synthetic wax and liquid polyethylene, said mixture being produced by means of stirring at 12-20 U/min and at a temperature of 18 to 25°C, is added to the emulsion at 50 to 70 °C.

The subject matter of claims 1 to 6 is therefore novel and meets the requirements of PCT Article 33(2).

2. Inventive step

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITYInternational application No.
PCT/EP2004/012855**Box No. V** **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

D2 is considered to be the closest prior art. The subject matter of claim 1 differs from the known method in that the fibers are premixed with wax.

The problem to be solved by the present invention can therefore be regarded as that of providing a method of producing a fiber-containing mascara.

The solution proposed in claims 1 to 6 of the present application can be regarded as inventive (PCT Article 33(3)) because nothing can be found in D2 that would suggest that the method according to claim 1 solves the aforementioned problem.

3. Industrial applicability

Claims 1 to 6 meet the requirements of PCT Article 33(4).